

FILED: December 21, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**No. 11-4716
(5:10-cr-00713-MBS-1)**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROMEO ALMONDS,

Defendant - Appellant.

O R D E R

Currently pending before this court is the Government's unopposed motion to remand this case to the district court to allow Almonds to be resentenced in accordance with the Fair Sentencing Act of 2010 (FSA). Based on our consideration of the materials submitted with this motion, we grant the motion to remand, vacate the criminal judgment, and remand this case to the district court to permit resentencing. By this disposition, however, we indicate no view as to whether the FSA is retroactively applicable to a defendant like Almonds whose offenses were committed prior to August 3, 2010, the

effective date of the Act, but who was sentenced after that date, leaving that determination in the first instance to the district court.*

Entered at the panel's direction: Judge Niemeyer, Judge Wynn, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

* We note that at Almonds' sentencing hearing conducted on June 30, 2011, counsel for the Defendant unsuccessfully argued for retroactive application of the FSA. Nevertheless, in light of the Attorney General's revised view on the retroactivity of the FSA, as well as the development of case law on this point in other jurisdictions, we think it appropriate, without indicating any view as to the outcome, to accord the district court an opportunity to consider the matter anew.